

**DMR ADVISORY COUNCIL MEETING**  
**Natural Resource Service Center**  
**April 1, 2010 10:00 a.m.**  
**Minutes**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Natural Resource Service Center, 6 Beech Street, Hallowell, Maine. AC members attending this meeting included **Al West (Chair), Glen Libby (Vice Chair), Dave Pecci (Secretary), Rod Mitchell, Dana Temple, Jim Markos, Jr., Ginny Olsen, Tim Harper, Bob Baines, Bill Sutter and Sean Mahoney**. Council members Vincent Balzano and George Harris, Jr., were unable to attend; members Bob Baines and Dave Pecci joined via telephone. Department staff included Deputy Commissioner David Etnier, Togue Brawn, Sarah Cotnoir, Col. Joe Fessenden, Donna Hall, and L. Churchill. Members from the public included William Smith, Stephen Robbins, III (Stonington Co-op), and Jeff Putnam (Lobster Advisory Council member, Zone F, Chebeague Island).

**1. Welcome**

The meeting was called to order shortly after 1:00 pm by the Chair, Al West. Introductions were made by council members to welcome the newest Advisory Council member, Sean Mahoney (public member seat).

**2. Approval of minutes** (see handout)

***Motion:** (R. Mitchell, D. Temple) Motion to approve the minutes of the meeting held Feb. 17, 2010.*

***Discussion:** None*

***Motion continued:** Unanimous to approve (Al West, Glen Libby, Rod Mitchell, Dana Temple, Jim Markos, Jr., Ginny Olsen, Tim Harper, Bob Baines, Bill Sutter and Sean Mahoney)*

**3. Special License requests** (see handout)

**William Smith**, Lebanon, Maine – Experimental Fish Traps in the Piscataqua River  
Bill Smith briefly described his request and responded to questions regarding size of the traps, frequency of tending, trap design, his background, discussions with department personnel and Marine Patrol. It was clarified that all information would be made public and is not proprietary.

***Motion:** (R. Mitchell, D. Temple) Motion to approve the Special License request from William Smith.*

***Discussion:** None*

***Motion continued:** Unanimous to approve (Al West, Glen Libby, Rod Mitchell, Dana Temple, Jim Markos, Jr., Ginny Olsen, Tim Harper, Bob Baines, Bill Sutter and Sean Mahoney)*

(Dave Pecci joined the meeting.)

**4. Regulations - Action (voting)** (see handouts)

**Chapter 34.10(1)(B) Halibut regulations**

Togue Brawn gave background, federal rule status and information about the proposed rulemaking and provided an additional handout titled Halibut Data, 2002-2008. Given that the NOAA Fisheries Service deems halibut at the brink of being overfished combined with the desire to keep this an open access fishery the Department proposes to decrease the season, size, bag limit (tags) and number of hooks for tub trawls. Biologically you want 50% of the females spawn. The fishermen supported no fishing in April as there is much anecdotal information that many are illegally caught in federal waters then. The fishermen prefer to avoid lower numbers of tags but this is intended to counter the upward trend of effort. The Department prefers to cap the tags at 25 before we have to cut back when there is even greater effort.

Dep. Comm. Etnier added that Maine is the only east coast state that allows this fishery on halibut. The Marine Resources Committee is well aware of this fishery as there are those who would lobby hard to do away with this fishery if it is not managed right. The concern is Maine is not proactive enough and would otherwise be further constrained. Internally limited-entry was discussed but we prefer not to go that route unless we absolutely have to. At this time there is a potential for 1200 participants, of which in 2008 there were only ~150 active fishermen. This is why these rules have been proposed instead of limited entry.

R. Mitchell: Why only data from 2008? Answer: 2009 is not yet available as many have not yet reported).

J. Markos: The statistics indicate many catch less than 25 anyway, so could this be delayed? (Answer: That is an option.)

Dep. Comm. Etnier: Timing is critical here as the current season starts today and this regulation conflicts with the proposed May 1 start. Tags have been issued but only 25 up to now. The delay and timing of this meeting created confusion. The season portion could be delayed until next year.

T. Brawn: The suggestion would be to move all measures forward except the season then next year would start the 2-month season. This would reduce confusion.

B. Sutter asked about the federal landings and overfishing issues.

T. Brawn: The federal position about halibut on the brink of overfishing is from GARM3. There are no discussions regarding a trans boundary fishery with Canada, which we would like to see. The Commissioner has asked about this but it is difficult.

B. Baines: Has the Inshore Trawl Survey shown an increase in the past few years?

T. Brawn: Only the Canadian survey has shown a weak recovery. If the federal survey in May shows a slight increase they will still call it overfished.

D. Temple: 2009?

T. Brawn: We can't compare to last year as we don't have that data yet however, the number of endorsement requests and the numbers of those actively fishing continue to increase.

G. Olsen: Is the increase possibly due to mandatory reporting?

T. Brawn: Halibut fishermen have always been required to report for this fishery.

B. Sutter: Do halibut occur in state waters south of Maine? Maine has the only state water fishery.

T. Brawn: The tags show an easterly movement.

B. Sutter: Are the feds considering no fishery?

T. Brawn: One federal commission recommended no fishery but was overturned to allow federal permitted shrimp fishermen one fish per trip.

B. Sutter: If there is no change here and the halibut fishery is declared by the feds to be overfished then Amendment 16 would include no take.

T. Brawn: Amendment 16 was passed yesterday.

B. Sutter: Now, due to the increased effort in the fishery the future likelihood is that if not passed would the feds shut Maine down?

T. Brawn: Lots of "ifs"; Terry Stockwell has indicated that the feds are clear that they do not want Maine's fishery.

D. Pecci: We did move forward on 25 tags for commercial charter boats, which seems to be the right thing to do; there is no heart burn on this from the recreational sector; keep the commercial type charter limit at 25 tags.

R. Mitchell: How shall we do this?

Dep. Comm. Etnier: Move as drafted except the season start date would be delayed one year.

B. Baines: Regarding the concern about effort, the Department has approved other limited entry fisheries. If the increase is significant and the 25 tag limit is arbitrary versus the potential increase in effort then that has to be dealt with by the Legislature. We need limited entry fisheries to protect fishermen trying to make their living. Once the numbers drop it will likely never go back over 25.

**Motion:** (R. Mitchell, G. Libby) Motion to approve the proposed rulemaking with the proposed 2-month season delayed to start next season (May 1, 2011).

**Discussion:**

B. Sutter: Commercial fishermen get a triple wham; the season and length are ok; but the Canadian 32" size difference and trans boundary issue is a problem; oppose the decrease in the catch limit, should stay with existing rules.

R. Mitchell: The Canadian fishermen can sell to other states.

B. Sutter: The decrease in take is no good because the potential is unknown; this should wait until the feds shut down the fishery.

D. Temple: There were only 11 who caught over 25 fish in 2008? (Answer: correct) This doesn't sound significant.

G. Libby: it is better to cut back now than to wipe out another fishery. Looking at the handout there are other years where the landings are similar to now and fewer fishermen; this is going down and should be a red flag. Keep the motion that the season stays as it is for this year.

A. West: I applaud DMR for being proactive because the feds will be on us in a few years. Why not be more aggressive about reporting, although that may take legislative action?

Dep. Comm. Etnier: It is not good to not have the 2009 numbers. The law allows us not to renew a license if the license holder has not reported. We've never gone to this within a month to month basis.

B. Sutter: Failure to report should be a violation.

Dep. Comm. Etnier: They may be summoned for that, yes.

B. Sutter: If persons are caught for any non-reporting there should be a violation; you should get the data and we should have this data now.

G. Libby: If you don't have all your logs in then the DMR won't renew your license.

T. Harper: If you're federally permitted the trip reports must be filled out daily.

A. West: This discussion is a bit far afield.

R. Mitchell: It is good to show the feds that Maine is proactive about sustainability. The data needs to be available on age from otoliths. According to the landings data the size is decreasing.

G. Olsen: There was a lot of small stuff last season.

R. Mitchell: Support the 25 tag limit.

A. West: The chair calls for the vote. Any further comments?

B. Baines: Would the Advisory Council support limited-entry?

D. Pecci: Closed fisheries scare the recreational sector; this would set a bad recreational precedent.

B. Baines: This would be only for the commercial fishery. They make money in the spring with this and want it to stay viable.

G. Olsen: Who needs the endorsement?

T. Brawn: Commercial fishing license holders. The recreational fishermen do not need the license/endorsement.

**Motion continued:**

**Affirmative:** D. Pecci, Bob Baines, Al West, Glen Libby, Sean Mahoney, Jim Markos, Jr., Rod Mitchell, Dana Temple

**Non-Affirmative:**

**Opposed:** Ginny Olsen, Tim Harper, Bill Sutter

**The motion passed by a majority of affirmative votes.**

G. Olsen: My reason for voting no is based on the amount of effort.

(Dave Pecci left the meeting.)

**Chapter 25.08(A)(4) Double Tagging in Zone B & Zone C**

Dep. Comm. Etnier: This council requested the DMR to go back to meet with Zones B and C, which we did, see handout dated March 8<sup>th</sup> that details the attendees, facts, findings and conclusions.

Regarding the facts, the bottom line is that the law has been in effect for 11 years. Double tagging is a tool to enforce that law. The comments from persons complaining about the law need to take that complaint to their legislators. The DMR is down eight Marine Patrol Officers and that will be this way for awhile. Dep. Comm. Etnier reviewed the nine findings on the handout. For finding 3, he added that that there were 3-5 persons fishing near the MDI Rock area, which has increased substantially to 5-10 in the last 10-15 years. This is similar to the changes folks saw in Zones F and G. Finding 5, the build up in Zone C is also due to Zone C being an open zone. Finding 7, a one-time shift between zones was discussed but it is not allowed according to the law. Finding 8, the existing lines versus the 3 mile line have been in place for 10 years. There have been 4 legislative bills proposed to change the lines going to the EEZ and each has failed. Finding 9, Patrol needs this to enforce the law now. In conclusion, a meeting was held to find common ground and have brought this information back to this council for your thoughts.

R. Mitchell: How is this tracked, is this a new law?

D. Temple: This is another tool to enforce an existing law.

R. Mitchell: This is not changing a law on the books? Answer: correct.

B. Baines: May we have a motion?

Dep. Comm. Etnier: The motion must come from a prevailing voter last meeting. First there must be a reconsideration of the motion. The second does not have to be made by a voter from the prevailing side.

**Motion:** 1<sup>st</sup> J. Markos: *Per my request the DMR met with the fishermen, having no results I wish to change my vote at the last time meeting; therefore this is a **motion to reconsider** the previous vote on this matter.*

2<sup>nd</sup> G. Olsen

**Discussion:** Clarifications on procedures were discussed.

**Motion continued:**

**Affirmative:** Ginny Olsen, Dana Temple, Jim Markos, Jr., Rod Mitchell, Al West, Sean Mahoney, Glen Libby, Bob Baines

**Non-Affirmative:**

**Opposed:** Tim Harper, Bill Sutter

**The motion passed by a majority of affirmative votes.**

**Motion:** 1<sup>st</sup> G. Olsen: *Motion to not approve (again) the proposed rulemaking for Chapter 25.08(A)(4) Double Tagging in Zone B & Zone C*

2<sup>nd</sup> T. Harper

**Discussion:** Procedural discussion regarding the motion made in the negative.

**G. Olsen: Motion to withdraw the “negative” motion.**

B. Sutter: *In the last meeting the prevailing votes were to not approve.*

Chair Al West: **The chair rules that the motion is an improper motion because it was made in the negative and procedurally must be made in the affirmative.**

**Motion:** 1<sup>st</sup> G. Olsen: *Motion to approve the proposed rulemaking for Chapter 25.08(A)(4) Double Tagging in Zone B & Zone C, as written.*

2<sup>nd</sup> D. Temple

**Discussion:**

G. Olsen: *To be clear, I’m not trying to make it more difficult for Marine Patrol. It won’t be any easier to fight over 4-5000 traps with the Vinalhaven guys.*

B. Baines: *D. Etnier framed it well; the Lobster Advisory Council (LAC) has voted 11-1 to support this rulemaking. This is not a referendum on changing the line to the 3 mile limit. It is only a tool for Marine Patrol. The law is on the books.*

G. Libby: *The proper channel to change the law is through the Legislature; this is just about tagging and it should be supported.*

G. Olsen: *I agree but I said at the last meeting we should wait a year for this to go through the legislative process before bringing this back up again and support the fishermen.*

D. Temple: *This sets 2 precedents: if we don’t support it then we support an illegal precedent. If fishermen realize this point it will create problems in other zones. We should help enforcement. They all agreed to the law 10-15 years ago.*

G. Olsen: *The separate zones manage themselves; we shouldn’t single out one, it should be required for all.*

R. Mitchell: *Support this as a tool. They should hold to their zone especially with decreasing numbers of patrol officers; we need to give them this tool and support the law as written.*

Col. Fessenden: *Currently Zone B wants us to increase enforcement. We tried the offer of a buffer zone but it was unsuccessful. Lt. Talbot was asked to enforce. MP Officer Eaton has reported that folks are already voluntarily moving their traps. I’ve had calls asking when we were going to enforce this. If not passed enforcement must locate and haul ~400 traps to find a violation of this law.*

B. Sutter: *There is information on this handout that was not in the hearing comments; such as not understanding that Zone C was open and Zone B is not an open zone. What was the meeting March 8<sup>th</sup>?*

S. Cotnoir: *At the last meeting the Advisory Council asked the DMR to go back to meet Zone B and C guys. This was guidance from this council and was a small meeting, not a public hearing.*

B. Sutter: Although not particularly opposed to double tagging but the circumstances of 4-5000 traps moving back to Zone C from Zone B is an issue. Ten years ago when the fishery for a group of gillnetters went south they turned to lobster fishing in Zone C. Once they got their 800 traps to fish in the winter offshore; but instead they went beyond and turned left into Zone B. Now there are more folks fishing there and the Zone C guys are in violation of the law.

If approved now there would be immediate requirements for Zone C to double tag and offshore guys are not thinking about the inshore guys. If there are 15,000 traps and 20 guys then there are 8,000 traps that have to be moved and there will be real conflicts in Zone C. This is beyond the 3 mile limit and looking at the lobster management lines, hard lines...

Dep. Comm. Etnier: In the 1997 rules the lines ran to the EEZ and were not an issue at the time as there were no voting lines. In 1998 when limited-entry was introduced by zone it resulted in the 49/51% with the "majority" of traps now required to be fished in your limited-entry zone.

B. Sutter: In Comm. Robin Alden's preliminary notes it stated the lines wouldn't go beyond 3 miles.

Dep. Comm. Etnier: The regulations she supported and signed went to the EEZ.

B. Sutter: On the Maine lobster license there is a check-off for Area 1A but no federal permit check off.

A discussion followed about federal permits, the double tagging in Zones F and G, changes in how folks fish, federal permit holders who can fish Area 1A and territorial claims.

B. Sutter: My reason to oppose this is that fishermen need to find their legislator and if successful, ok but if not successful then I would vote to enforce using tags. We should be willing to wait the time it takes to take this to the Legislature, they should review next. This should apply to all zones not just one.

S. Cotnoir: Having attended this meeting it was clear that this was an inshore issue also. Whether this rule passes today or not the law will be enforced without double tagging.

D. Temple: Fishermen should have been aware that this was not limited to just within the 3 mile limit in the last 10-15 years. When speed limits change you are responsible for knowing the law. This is cut and dry; it is a tool for enforcement.

G. Olsen: Who was at the meeting?

S. Cotnoir: The names are on the handout. Even if this goes to the Legislature a 5<sup>th</sup> time there is an inside issue anyway.

A. West: The chair called for the vote.

**Motion continued:**

**Affirmative:** Al West, Glen Libby, Sean Mahoney, Rod Mitchell, Jim Markos, Jr., Dana Temple, Bob Baines

**Non-Affirmative:**

**Opposed:** Ginny Olsen, Tim Harper, Bill Sutter

**The motion passed by a majority of affirmative votes.**

(B. Baines left the meeting.)

## 5. Other Business

### ASMFC & NEFMC Updates

Dep. Comm. Etnier explained that Comm. Lapointe was not at the today's meeting because he was sick. G. Libby offered to report on the recent herring meetings that took place this week in Portland. The NEFM Council voted to move the herring stock assessment to 2011. The analysis will make a 3 month difference in the time frame. If this is stretched out it could leave more herring. It was unanimous to wait the 3 months. They couldn't set limits for the following 3 years if they wait too long.

A. West: They talked a lot about vessel monitoring; deterring slippage on the net but nothing firm at this time.

### Legislature

Dep. Comm. Etnier discussed the budget situation and bills that were passed this session. Lobster processing was expanded. A pelagic and anadromous license was created effective for next year.

G. Libby asked if dogfish and squid would require two licenses. (Answer: Yes as they would no longer be covered by the commercial fishing license; and in federal waters too as a Maine license

holder you are bound by Maine law.) In the DMR errors and inconsistencies bill a law has been added to allow the Commissioner to adopt rules for public health and safety due to gear conflict based on what happened on Matinicus this past year. This would be only in the case where public safety is concerned when there is a threat of harm to a person or property. Marine Patrol has always had the ability to intercede with fixed versus mobile gear conflicts. Another new bill passed would require a dealer of any sort to buy only from "licensed" harvesters. As of January 1, 2011 a recreational fisherman must register with NOAA; there would have been a federal license fee if no state license and Maine now has this requirement. If you hold a Maine fresh water fishing license and want to fish in salt water, you add a \$2 transaction fee to all this. Non-resident fresh and salt water fishing plus striped bass would require the \$2 transaction fee plus \$15. If only fishing in marine waters other than for striped bass then it is free plus the \$2 transaction fee. If only fresh water fishing then you would buy only the fresh water license. If you catch or land or possess a striped bass it is \$5 and the same for a non-resident would be the \$15. You can't say you're throwing the striped bass back over. The license fees go to the striped bass fund. There are exemptions for children and older folks.

### **Other Updates**

Dep. Comm. Etnier described the recent emergency rulemaking for the New Meadows Lake restrictions including working only during daylight hours, hand harvest methods only or no mechanical devices or diving, and will expire in 90 days. The DMR is considering longer term measures. The stock is healthy but the effort is very high. Col. Fessenden added there can be as many as 50 boats in this area with many harvesting 4-500 pounds each.

**Motion:** (B. Sutter, D. Temple) Motion to close the meeting.

**Discussion:** None

**Motion continued:** Unanimous to approve